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No. 95-286

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

MISSISSIPPI RIVER TRANSMISSION CORPORATION, MURPHY EXPLORATION AND PRODUCTION COMPANY, PENNZOIL EXPLORATION AND PRODUCTION COMPANY, TOTAL MINATOME CORPORATION, NORAM ENERGY CORP. AND ROSEWOOD RESOURCES, INC.,
Petitioners,

v.

SECRETARY, LOUISIANA DEPARTMENT OF REVENUE AND TAXATION,
Respondent.

On Petition for a Writ of Certiorari to the Court of Appeal, First Circuit, State of Louisiana

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BRIEF OF AMICUS CURIAE AMERICAN PETROLEUM INSTITUTE IN SUPPORT OF PETITIONERS

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29 pp

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF INTEREST 2

SUMMARY OF ARGUMENT 2

REASONS FOR GRANTING THE PETITION 5

I. IMPOSITION OF THE LOUISIANA SEVERANCE TAX IS INCONSISTENT WITH THE INTENT OF CONGRESS IN THE BUCK ACT AND THE MLAAL 5

II. THE LOUISIANA DEPARTMENT HAS ATTEMPTED TO CIRCUMVENT THE DECISIONS OF THE FEDERAL COURTS 12

III. LOUISIANA'S INTERPRETATIONS OF THE BUCK ACT AND THE MLAAL COULD PRODUCE AN UNANTICIPATED DECREASE IN FEDERAL TAX REVENUE ... 15

IV. IMPOSITION OF STATE SEVERANCE TAXES COULD DECREASE THE VALUE OF MINERAL LEASES ON FEDERAL LANDS 17

CONCLUSION 19

APPENDIX 1a

TABLE OF AUTHORITIES

CASES

Anson v. Commissioner, 328 F.2d 703 (10th Cir. 1964) 9

Commissioner v. Glenshaw Glass Co., 348 U.S. 426 (1955) 7

Commissioner v. Indianapolis Power & Light Co., 493 U.S. 203 (1990) 7, 9

Deposit Bank v. Board of Councilmen, 191 U.S. 499 (1903) 14, 15

Galt v. Commissioner, 216 F.2d 41 (7th Cir. 1954), *cert. denied*, 348 U.S. 951 (1955) 7

Gelb v. Royal Globe Ins. Co., 798 F.2d 38 (2d Cir. 1986), *cert. denied*, 480 U.S. 948 (1987), *and cert. denied*, 502 U.S. 1005 (1991) 14

Hancock v. Train, 426 U.S. 167 (1976) 11

Heck v. Humphrey, ___U.S. ___, 114 S. Ct. 2364 (1994) 14

Helvering v. Bruun, 309 U.S. 461 (1940) 7

Humble Pipe Line Co. v. Waggonner, 376 U.S. 369 (1964) ..... passim

Lord v. Local Union No. 2088, Int'l Bhd. of Elec. Workers, 646 F.2d 1057 (5th Cir. Unit B), *reh'g denied*, 654 F.2d 723 (5th Cir. 1981), *and cert. denied* 458 U.S. 1106 (1982) 11

Mississippi River Fuel Corp. v. Cocreham, 382 F.2d 929 (5th Cir. 1967), *reh'g denied*, 390 F.2d 34 (5th Cir.), *cert. denied*, 390 U.S. 1014, *and cert. denied*, 390 U.S. 1015 (1968) 4, 8, 9, 13

Mouton v. Sinclair Oil and Gas Co., 410 F.2d 717 (5th Cir. 1969), *cert. denied*, 398 U.S. 957 (1970) 4, 13

Nutter v. Monongahela Power Co., 4 F.3d 319 (4th Cir. 1993) 14

Reeder v. Succession of Palmer, 623 So. 2d 1268 (La. 1993), *cert. denied*, __ U.S. __, 114 S. Ct. 1191 (1994) 14

Seven Elves, Inc. v. Eskenazi, 704 F.2d 241 (5th Cir. 1983) 14

Shell Oil Co. v. Mouton, 410 F.2d 715 (5th Cir. 1969) 4, 13

Stoll v. Gottlieb, 305 U.S. 165, *reh'g denied*, 305 U.S. 675 (1938) 14

Tarver v. Wilson, Civ. No. 90-0043 (W.D. La. May 22, 1990) 4, 13, 15

United Gas Pipe Line Co. v. Whitman,
390 So. 2d 913 (La. Ct. App. 2d Cir. 1980), *cert. denied*,
396 So. 2d 928 (La.), *and cert. denied*,
396 So. 2d 929 (La. 1981) 7

United States v. City & County of Denver,
573 F. Supp. 686 (D. Colo. 1983) 8

United States v. State Tax Comm'n, 421 U.S. 599
(1975) 10

Williams Natural Gas Co. v. Oklahoma City,
890 F.2d 255 (10th Cir. 1989),
cert. denied, 497 U.S. 1003 (1990) 15

STATUTES

Buck Act, 4 U.S.C. §§ 105-110 ..... passim

4 U.S.C. § 107(a) 9, 10

4 U.S.C. § 110(e) 16

26 U.S.C. § 63 16

26 U.S.C. § 164 16

Mineral Leasing Act for Acquired Lands ("MLAAL"),
30 U.S.C. §§ 351-359 ..... passim

30 U.S.C. § 352 16

30 U.S.C. § 357 ..... 4, 6, 10, 11, 16

La. R.S. 47:287.2-.785 ..... 7, 10

La. R.S. 47:631 ..... 7, 8, 13

La. R.S. 47:633 ..... 8, 10, 13, 17

MISCELLANEOUS

S. Rep. No. 1625, 76th Cong., 3d Sess. (1940) 6, 8

Treas. Regs. § 1.61-1(a) (1957) 7

1 Bittker & Lokken, *Federal Taxation of Income, Estates and Gifts* ¶ 5.2 at 5-17 (2d ed. 1989) 7

Howard R. Williams & Charles J. Meyers, *Manual of Oil and Gas Terms* 1013 (1994) 7

Report of the Interdepartmental Committee For The Study Of Jurisdiction Over Federal Areas Within The States, *Jurisdiction Over Federal Areas Within The States*, Part I (1956) 3

Restatement (Second) of Judgments § 87 (1980) 14

18 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 4468 at 648-49 (1981) 15

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MISSISSIPPI RIVER TRANSMISSION CORPORATION, *et al.*

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BRIEF OF AMICUS CURIAE AMERICAN PETROLEUM INSTITUTE IN SUPPORT OF PETITIONERS

The American Petroleum Institute ("API") respectfully files this brief, as an *amicus curiae*, in support of the Petition for Writ of Certiorari filed by Mississippi River Transmission Corporation, Murphy Exploration and Production Company, Pennzoil Exploration and Production Company, Total

Minatome Corporation, NorAm Energy Corp. and Rosewood Resources, Inc. ("Petitioners").[1]

STATEMENT OF INTEREST

The API is a trade association located in Washington, D.C., which represents the interests of its membership on issues of national importance before federal government agencies, Congress, and the courts. The API has over 300 members, from all segments of the oil and gas industry, including many integrated and independent oil and gas producers. Those members hold interests in many oil and gas leases on federal lands, and have an interest in the resolution of the issues presented in the Petition.

The Petition asks this Court to decide whether Louisiana may impose a severance tax on oil and gas produced from acquired federal lands subject to the exclusive jurisdiction of Congress. The Louisiana courts held that Louisiana has the power to impose such taxes pursuant to two federal statutes, the Buck Act, 4 U.S.C. §§ 105-110, and the Mineral Leasing Act for Acquired Lands ("MLAAL"), 30 U.S.C. §§ 351-359. If other states adopt Louisiana's interpretation of the federal statutes at issue in this case, the interests of API members that currently hold oil and gas leases on acquired federal lands, or seek to bid on such leases in the future, could be directly affected.

SUMMARY OF ARGUMENT

This Court should grant certiorari to correct the erroneous interpretation of federal law by the Louisiana courts

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[1] All parties to this action have consented to the filing of this brief, and their letters of consent have been filed with the Clerk of the Court.

in this case. Louisiana's expansive interpretation of the Buck Act and the MLAAL would allow the states to impose taxes on mineral production, or any other activity by federal lessees on acquired federal lands, even where the states had previously ceded the lands to the federal government without reserving taxing jurisdiction.[2] That interpretation is clearly contrary to the intent of Congress.

The legislative history and plain language of the Buck Act indicate that Congress intended the statutory definition of "income tax" to encompass only state taxes that are assessed on "income." The incidence of the tax at issue in this case, which Louisiana itself classifies as a severance tax, is on the severance of minerals from the land, not on the actual receipt

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[2] The subject of jurisdiction over acquired federal lands is complex, because it is dependent on the terms under which particular lands were originally ceded to the federal government. *See generally* Report of the Interdepartmental Committee For The Study Of Jurisdiction Over Federal Areas Within The States, *Jurisdiction Over Federal Areas Within The States*, Part I (1956). For historical reasons, nearly all land acquired by the United States between 1840 and 1940 falls within the exclusive legislative jurisdiction of the federal government. *See id.* at 8-11. Over the years, most states enacted statutes of general applicability authorizing the transfer of lands to the federal government for various purposes. *See, e.g., id.* at Appendix B to Part I. In those statutes, many states ceded virtually exclusive jurisdiction to the federal government, reserving only certain aspects of state jurisdiction, such as service of process. In some states, the right to impose taxes has also been reserved. Attached as Appendix A is a current list of states that have enacted statutes ceding, or authorizing the governor or legislature to cede, exclusive jurisdiction over acquired federal lands without reserving taxing jurisdiction, or reserving taxing jurisdiction only to the extent permitted by federal law. The outcome of this case could have an impact on acquired federal lands in those states. In addition, this case could have an impact on acquired lands in other states that presently reserve taxing jurisdiction, but previously ceded lands to the federal government without reserving such jurisdiction.

of any income, and it therefore is not an "income tax" under the Buck Act.

Louisiana's interpretation of Section 8 of the MLAAL, 30 U.S.C. § 357, is similarly contrary to the intent of Congress. Louisiana interprets Section 8 as an affirmative retrocession of taxing authority. However, that section is merely a savings clause that preserves any rights that Louisiana may have to impose taxes. Because Louisiana did not reserve the right to tax when it ceded jurisdiction over Barksdale Air Force Base to the United States, Louisiana has no rights to preserve under Section 8 of the MLAAL.

The Louisiana decisions attempt to circumvent the prior decision of this Court in *Humble Pipe Line Co. v. Waggonner*, 376 U.S. 369 (1964), which held that Louisiana lacked jurisdiction to levy an ad valorem tax on privately owned property located on Barksdale Air Force Base. In addition, the decisions of the Louisiana courts conflict with the decisions of the U.S. Court of Appeals for the Fifth Circuit and the U.S. District Court for the Western District of Louisiana, which have held, in four separate opinions, that Louisiana may not levy a severance tax on oil and gas extracted from the very same federal lands at issue in this case.[3] Louisiana's attempt to circumvent those federal court judgments contravenes the established principles of issue preclusion and comity between state and federal courts.

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[3] *See Mouton v. Sinclair Oil and Gas Co.*, 410 F.2d 717 (5th Cir. 1969), *cert. denied*, 398 U.S. 957 (1970); *Shell Oil Co. v. Mouton*, 410 F.2d 715 (5th Cir. 1969); *Mississippi River Fuel Corp. v. Cocreham*, 382 F.2d 929 (5th Cir. 1967), *reh'g denied*, 390 F.2d 34 (5th Cir.), *cert. denied*, 390 U.S. 1014, *and cert. denied*, 390 U.S. 1015 (1968); *Tarver v. Wilson*, Civ. No. 90-0043 (W.D. La. May 22, 1990).

Louisiana's interpretations of the Buck Act and the MLAAL could have an impact on the U.S. Treasury, because they open the door to the imposition of a wide variety of state taxes on virtually any activity by private parties on acquired federal lands. If the decision below is not reversed, other states may adopt Louisiana's expansive views of the Buck Act and MLAAL, and impose their own taxes on mineral production or other activities on acquired federal lands, even where they have previously relinquished exclusive jurisdiction over such lands to the federal government. Because state taxes are generally deductible from income for purposes of calculating federal income taxes, the effect of increasing state taxes could be to reduce federal tax revenues.

Finally, imposition of state severance taxes could decrease the value of mineral leases on acquired federal lands in states that have not reserved the right to impose such taxes. The imposition of a severance tax could result in a substantial additional cost on federal lessees, which would have to be taken into account in the evaluation of the leases. The additional cost of a severance tax could have an impact on how much private parties are willing to pay the federal government for mineral leases on acquired lands in the future, and could result in premature abandonment of mineral production from federal leases, due to the reduced profitability of those leases.

REASONS FOR GRANTING THE PETITION

I. IMPOSITION OF THE LOUISIANA SEVERANCE TAX IS INCONSISTENT WITH THE INTENT OF CONGRESS IN THE BUCK ACT AND THE MLAAL.

In this case, the Louisiana courts have interpreted a federal statute, the Buck Act, 4 U.S.C. §§ 105-110, to allow

the imposition of Louisiana severance taxes on the production of oil from acquired federal lands, because the severance tax is measured by the value, rather than the quantity, of oil production, and allegedly fits within the definition of an "income tax" under the Buck Act. In addition, separate and distinct from their interpretation of the Buck Act, the Louisiana courts held that Congress granted Louisiana the authority to impose severance taxes on both oil and natural gas under the savings clause in Section 8 of the MLAAL, 30 U.S.C. § 357. Louisiana's assertions that the severance tax is an "income tax" under the Buck Act, and that Section 8 of the MLAAL is an affirmative grant of taxing authority to the states, are clearly wrong and contrary to the intent of Congress.

Congress enacted the Buck Act, 4 U.S.C. §§ 105-110, for two specific purposes. First, Congress wanted to provide that federal employees who reside within federal areas would not be exempt from state income taxes. S. Rep. No. 1625, 76th Cong., 3d Sess. 3 (1940). Second, Congress wanted to ensure that a sale or use of tangible personal property that occurs within a federal area would be treated for state tax purposes in the same way as an otherwise identical sale or use that occurs outside the federal area. *Id.* at 2.

It is clear from the examples discussed in the legislative history that when Congress enacted the Buck Act, it had before it only those two very narrow concerns. There is no indication anywhere in the statute or the legislative history that Congress intended to give the states carte blanche to impose any type of tax, on any type of activity, occurring within acquired federal lands. In particular, there is no indication anywhere in the legislative history that Congress intended to allow the levy of a state severance tax on minerals extracted from acquired federal lands.

In this case, Louisiana argues that its severance tax on oil should be considered an income tax for purposes of the

Buck Act. However, the concept of an income tax is well established in tax law, and is premised on the realization of "income," in the form of money, property or services, or the reduction of a debt.[4] The applicable legal concepts are no different in Louisiana, and the Louisiana Revised Statutes contain provisions specifically describing an income tax in those terms.[5] In contrast, severance taxes are premised only on the act of severing minerals from real estate.[6] In Louisiana, the state's severance taxes are set forth in statutory provisions that are in a separate chapter from the provisions concerning income taxes. *See* La. R.S. 47:631.

The Louisiana severance tax is not dependent on the realization of income from the sale of minerals, but merely on

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[4] *See, e.g., Commissioner v. Indianapolis Power & Light Co.*, 493 U.S. 203, 209 (1990) (describing "income" as "'undeniable accessions to wealth, clearly realized, and over which the taxpayers have complete dominion'" (quoting *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955))); *Helvering v. Bruun*, 309 U.S. 461, 469 (1940) ("Gain may occur as a result of exchange of property, payment of the taxpayer's indebtedness, relief from a liability, or other profit realized from the completion of a transaction."); Treas. Regs. § 1.61-1(a) (1957); *see also Galt v. Commissioner*, 216 F.2d 41, 50 (7th Cir. 1954) ("[A]n income tax is imposed upon income at the time of its realization."), *cert. denied*, 348 U.S. 951 (1955); 1 Bittker & Lokken, *Federal Taxation of Income, Estates and Gifts* ¶ 5.2 at 5-17 (2d ed. 1989) (principle that gains are not taxed as income "until they have been 'realized' in some way" is "so basic to the structure of the law that the principle is not challenged").

[5] *See* La. R.S. 47:287.2-.785 (corporation income tax).

[6] *See* Howard R. Williams & Charles J. Meyers, *Manual of Oil and Gas Terms* 1013 (1994); *United Gas Pipe Line Co. v. Whitman*, 390 So. 2d 913, 918 (La. Ct. App. 2d Cir. 1980) (severance tax is excise tax imposed on privilege of severing natural resources from soil), *cert. denied*, 396 So. 2d 928 (La.), *and cert. denied*, 396 So. 2d 929 (La. 1981).

the severance of minerals from the land.[7] The tax is due at the moment of severance, even if there has been no sale, or other exchange for value, of such minerals. *Cocreham*, 382 F.2d at 938 ("the incidence of taxation" is "the severance of minerals from the soil"). As the Fifth Circuit recognized in *Cocreham*, "the Louisiana severance tax is simply not an income tax." *Id.* at 940.

The legislative history of the Buck Act indicates that the statutory definition of "income tax" was intended to encompass state taxes assessed on "income," although they might not be called "income" taxes.[8] However, "it seems apparent that the variations contemplated by the Congress were variations in the *name* or the *form* of the state tax, but not variations in the *substance* of the tax."[9]

Louisiana argues that because it has amended the severance tax on oil to allow for measurement of the tax based on value, the severance tax should be viewed as an "income tax." However, under the Louisiana statute, the severance tax may be levied on oil even if there is *no* sale and there is *no* actual income. If the oil were simply placed in storage, the tax would still be assessed, based on the "posted field price." La. R.S. 47:633(7). That result would be like imposing an income

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[7] *See* La. R.S. 47:631 ("Taxes . . . are hereby levied upon all natural resources severed from the soil or water . . . ."); *Cocreham*, 382 F.2d at 940 ("The Louisiana severance tax is 'levied upon all natural resources severed from the soil * * * including * * * minerals such as oil [and] gas * * *,' LSA-R.S. 47:631 . . . .").

[8] S. Rep. No. 1625, 76th Cong., 3d Sess. 5 (1940) (noting Committee's intent to "include therein any State tax (whether known as a corporate-franchise tax, or business-privilege tax, or by any other name) if it is levied on, with respect to, or measured by, net income, gross income, or gross receipts").

[9] *United States v. City & County of Denver*, 573 F. Supp. 686, 691 (D. Colo. 1983) (emphasis added).

tax on the value of the inventory of a manufacturing concern, on the theory that the inventory will be sold someday, resulting in income.[10] The flaw in Louisiana's argument is that it ignores the concept of realization, and thus is contrary to one of the basic premises underlying an income tax.[11] No matter how it is measured, the event that triggers the liability for the severance tax is severance from the land, not the receipt of income. Therefore, because the Louisiana severance tax on oil may be imposed even where there has been no receipt of income, and because the "incidence of taxation" is the "severance of minerals from the soil," it is not an "income tax" for purposes of the Buck Act. *Cocreham*, 382 F.2d at 938.

The effect of a severance tax on minerals produced from federal lands is substantially different from the situations Congress was attempting to address in the Buck Act. The federal government has no property interest in the salaries of federal employees or sales of personal property that occur in federal areas. In contrast, the severance taxes at issue in this case could affect the value of minerals that are owned by the federal government. *See* Part IV, *infra*. In 4 U.S.C. § 107(a), Congress expressly prohibited "the levy or collection of any tax on or from the United States." As explained in Part IV, if the severance tax is applicable, the effect may be to decrease the amount private parties are willing to pay for mineral leases on acquired federal lands, thus effectively imposing the burden of the tax on the United States. The tax is therefore inconsistent

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[10] *Cf. Indianapolis Power & Light*, 493 U.S. at 210 ("Any income that the utility may earn through use of the deposit money of course is taxable, but the prospect that income will be generated provides no ground for taxing the principal.").

[11] *See, e.g., Anson v. Commissioner*, 328 F.2d 703, 705 (10th Cir. 1964) ("Tax is not imposed upon what income should be but upon what income actually is.").

with the express direction from Congress in Section 107 of the Buck Act.[12]

Finally, in the Buck Act, Congress was responding to the complaints of the states that some federal employees and some sales transactions on federal lands were escaping state taxation completely. In contrast, in this case, Petitioners have *already paid*, and continue to pay, Louisiana *income* taxes, under the *income* tax provisions set forth in La. R.S. 47:287.2-.785, on the income derived from the oil produced from Barksdale, after the eventual sale of the oil, when the income is realized. Contrary to the intent of Congress, Louisiana is attempting to impose its severance tax in addition to the state income tax. Unlike the limited situations Congress intended to address in the Buck Act, the transactions at issue in this case do not escape state taxation, because they are subject to the "real" Louisiana income tax at the time of the actual receipt of income. That limited grant of taxing jurisdiction is all that Congress intended to authorize in the Buck Act.

Significantly, it is clear that even under Louisiana's theory, the Louisiana severance tax on *natural gas* cannot be an "income tax" under the Buck Act, because the tax on natural gas is measured by quantity, not value. La. R.S. 47:633(9). Louisiana has attempted to circumvent that problem by arguing that the savings clause in Section 8 of the MLAAL, 30 U.S.C. § 357, affirmatively grants jurisdiction to the states, separate and distinct from the Buck Act, to impose state taxes on minerals produced from acquired federal lands, even in instances where the state has not previously reserved

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[12] *See, e.g., United States v. State Tax Comm'n*, 421 U.S. 599, 604-05 (1975) ("The exception in § 107(a) is plainly a congressional preservation of federal immunity from any state tax that would violate the principle of McCulloch v. Maryland, *supra*, prohibiting state taxation of instrumentalities of the United States.").

taxing jurisdiction. Section 8 of the MLAAL, however, is not an affirmative grant of taxing power to the states, as Louisiana has asserted, but is simply a savings clause. Section 8 provides:

> Nothing in this chapter shall be construed or held to affect the rights of the States . . . to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States.

30 U.S.C. § 357.

Under the plain language of the statute, Congress did not grant the states any new taxing power in the MLAAL, but simply preserved any existing rights that they may have. If a state has reserved taxing jurisdiction at the time of ceding land to the federal government, Section 8 preserves that jurisdiction. However, if a state has ceded land to the federal government without reserving jurisdiction to tax, Section 8 does not give back that jurisdiction. The law is clear that a retrocession of jurisdiction must be explicit.[13]

Under Louisiana's interpretation, the types of taxes that could be imposed on acquired federal lands by the states would not be limited to income and sales taxes, as they are under the Buck Act. The language of the savings clause extends to any state tax on the "rights, property or assets of any lessee of the United States." 30 U.S.C. § 357. Thus, with respect to acquired federal lands where the states have previously retained *no* taxing jurisdiction, the states would suddenly gain the

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[13] *See Humble*, 376 U.S. at 374; *Hancock v. Train*, 426 U.S. 167, 179 (1976); *Lord v. Local Union No. 2088, Int'l Bhd. of Elec. Workers*, 646 F.2d 1057, 1062-63 (5th Cir. Unit B), *reh'g denied*, 654 F.2d 723 (5th Cir. 1981), *and cert. denied*, 458 U.S. 1106 (1982).

power to impose taxes on "rights, property or assets" of federal lessees. Louisiana's interpretation of the MLAAL cannot be correct, because it is contrary to this Court's decision in *Humble*, which held that Louisiana lacked jurisdiction to levy an ad valorem tax on property owned by federal lessees on Barksdale Air Force Base. 376 U.S. at 371-74.

II. THE LOUISIANA DEPARTMENT HAS ATTEMPTED TO CIRCUMVENT THE DECISIONS OF THE FEDERAL COURTS.

The underlying issues presented by this case are not new. Litigation over essentially the same issues has been in progress in the state and federal courts in a succession of cases over the past 30 years, since this Court's decision in *Humble*. Not surprisingly, the Louisiana state courts have consistently sided with the Louisiana Department of Revenue and Taxation. However, every federal court that has ruled on the issues since *Humble* has held against the state.

First, the actions of Louisiana, upheld by the Louisiana courts, are a clear attempt to circumvent the decision of this Court in *Humble*. In *Humble*, the Court struck down Louisiana's attempt to levy an ad valorem tax, and explained that "[w]hen Congress wished to allow a State to exercise jurisdiction to levy certain taxes within a federal enclave it has specifically so stated, as in the Buck Act, 4 U.S.C. §§ 104-110." 376 U.S. at 374. Thereafter, Louisiana amended its severance tax on oil to provide for measurement by value, rather than quantity, changing the appearance of the tax without changing its substance, in an attempt to circumvent *Humble*.

Louisiana has also attempted to circumvent three prior decisions of the U.S. Court of Appeals for the Fifth Circuit, which held that Louisiana has no right to impose severance

taxes on oil and gas produced under federal leases from Barksdale Air Force Base.[14] In *Cocreham*, the Fifth Circuit explained that the "Louisiana severance tax is 'levied upon all natural resources severed from the soil * * * including * * * minerals such as oil [and] gas * * *,' LSA-R.S. 47:631, and is measured by the quantity of minerals severed, LSA-R.S. 47:633," and therefore, "is simply not an income tax." 382 F.2d at 940.[15] After *Cocreham*, Louisiana did not change the statutory provision describing the event triggering the severance tax, the severance of minerals from the soil. *Compare Cocreham*, 382 F.2d at 940 *with* La. R.S. 47:631. Rather, Louisiana attempted to circumvent the Fifth Circuit's decisions by simply changing the unit of measurement of the severance tax on oil (but not gas) from quantity to value.

Finally, prior to the entry of the final judgment in this case in the state trial court, and prior to any of the proceedings in this case in the Louisiana Court of Appeal or the Louisiana Supreme Court, the U.S. District Court for the Western District of Louisiana entered judgment against the Louisiana Department of Revenue and Taxation in *Tarver v. Wilson*, Civ. No. 90-0043 (W.D. La. May 22, 1990) (Pet. App. F at 33a). *Tarver* involved the same federal enclave, and *exactly the same*

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[14] *Sinclair*, 410 F.2d 717; *Shell*, 410 F.2d 715 (5th Cir. 1969); *Cocreham*, 382 F.2d 929.

[15] In *Sinclair* and *Shell*, the Fifth Circuit held that its decision in *Cocreham* addressed, and clearly disposed of, all of the contentions raised by Louisiana in *Sinclair* and *Shell*. *Sinclair*, 410 F.2d at 718; *Shell* 410 F.2d at 716.

legal issues posed in this case. The Louisiana Department did not appeal *Tarver*, and it became final and binding with regard to the issues of federal law litigated therein.[16] Notwithstanding that fact, all of the Louisiana courts completely ignored *Tarver* in their decisions.

Louisiana argues that the Buck Act allows it to circumvent the Supreme Court's decision in *Humble* merely by changing the way the severance tax is measured. In *Tarver*, the U.S. District Court for the Western District of Louisiana rejected that argument, stating:

> The court cannot believe that the change in the method for calculation of the amount of the tax on the oil severed from a quantity-based tax to

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[16] *Heck v. Humphrey*, ___U.S. ___, 114 S. Ct. 2364, 2373 n.9 (1994) ("State courts are bound to apply federal rules in determining the preclusive effect of federal-court decisions on issues of federal law."); *Stoll v. Gottlieb*, 305 U.S. 165, 170 ("[W]here the judgment or decree of the Federal court determines a right under a Federal statute, that decision is 'final until reversed in appellate court, or modified or set aside in the court of its rendition.'" (quoting *Deposit Bank v. Board of Councilmen*, 191 U.S. 499, 520 (1903)), *reh'g denied*, 305 U.S. 675 (1938)). *Accord Nutter v. Monongahela Power Co.*, 4 F.3d 319, 321 (4th Cir. 1993) ("Federal law determines the preclusive effect of federal orders on a question of federal law, regardless of whether the court applying the federal judgment is state or federal."); *Gelb v. Royal Globe Ins. Co.*, 798 F.2d 38, 41 (2d Cir. 1986) ("A state court must apply federal law to determine the preclusive effect of a prior federal question judgment."), *cert. denied*, 480 U.S. 948 (1987), *and cert. denied*, 502 U.S. 1005 (1991); *Seven Elves, Inc. v. Eskenazi*, 704 F.2d 241, 244 n.2 (5th Cir. 1983) ("[S]tate courts generally are required to follow federal rules in deciding the preclusive effect of a prior federal question judgment of a federal court."); *Reeder v. Succession of Palmer*, 623 So. 2d 1268, 1271 (La. 1993) ("When a state court is required to determine the preclusive effects of a judgment rendered by a federal court exercising federal question jurisdiction, it is the federal law of res judicata that must be applied."), *cert. denied*, __ U.S. __, 114 S. Ct. 1191 (1994); *see also* Restatement (Second) of Judgments § 87 (1980) ("Federal law determines the effects under the rules of res judicata of a judgment of a federal court.").

> a value-based tax alters the . . . conclusion that the tax is not an income tax. This seems clear, as the severance tax at issue is not levied upon any particular taxpayer, but rather upon the natural resources themselves.

Tarver, Civ. No. 90-0043 (Pet. App. at 49a).

The Louisiana courts are not free to disregard the decisions of the federal courts. As this Court explained in *Deposit Bank v. Board of Councilmen*, 191 U.S. 499 (1903), regarding the obligation of a state court to give effect to a prior federal court decision, "[a]ny other conclusion strikes down the very foundation of the doctrine of *res judicata*, and permits the state court to deprive a party of the benefit of its most important principle, and is a virtual abandonment of the final power of the Federal courts to protect all who come before them relying upon rights guaranteed by the Federal Constitution, and established by the judgments of the Federal courts." 191 U.S. at 520.[17]

III. LOUISIANA'S INTERPRETATIONS OF THE BUCK ACT AND THE MLAAL COULD PRODUCE AN UNANTICIPATED DECREASE IN FEDERAL TAX REVENUE.

Louisiana's interpretations of the federal statutes at issue in this case open the door to the imposition of state taxes on virtually any activity by federal lessees on acquired federal lands, in instances in which the states have not previously

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[17] *Accord Williams Natural Gas Co. v. Oklahoma City*, 890 F.2d 255, 265 n.11 (10th Cir. 1989) ("The requirement that federal court judgments command at least the central core of res judicata effects in state courts is 'indispensable to federalism.'" (quoting 18 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 4468 at 648-49 (1981))), *cert. denied*, 497 U.S. 1003 (1990).

reserved taxing jurisdiction. As explained in Part I, *supra*, under the guise of the Buck Act, states could impose any type of tax on minerals, as long as the tax is value-based. Under the savings clause in the MLAAL, states could impose any type of tax on "rights, property or other assets" of federal lessees, without limitation. *See* 30 U.S.C. § 357. Louisiana's interpretations of the Buck Act and MLAAL are not limited to Barksdale Air Force Base. By its terms, the Buck Act is applicable to all "Federal areas" within the boundaries of a state. 4 U.S.C. § 110(e). Similarly, the MLAAL is applicable to all acquired federal lands. *See* 30 U.S.C. § 352.

If the Louisiana decisions are not reversed, other states may adopt Louisiana's expansive interpretations of the Buck Act and the MLAAL and impose their own state taxes on minerals produced from acquired federal lands, as well as other activities on federal lands, even if they did not reserve the right to impose state taxes at the time of ceding the land to the federal government. Because state taxes are generally deductible from federal income tax, the imposition of the severance tax or other state taxes by Louisiana and other states could have an unanticipated impact on federal tax revenues.

Under Section 164 of the Internal Revenue Code, a taxpayer may take a deduction on its federal income tax return for the amount of state income and other state taxes it has paid. 26 U.S.C. § 164. Deductions for state taxes reduce the taxpayer's federal taxable income and, therefore, reduce the amount of federal income taxes owed to the U.S. Treasury. 26 U.S.C. § 63. Because the effects of Louisiana's erroneous interpretations of the federal statutes are not limited to this particular case, or to Barksdale Air Force Base, but reach all lessees on acquired federal lands, the impact on federal tax revenues could be significant over time. The legislative history of the Buck Act makes it clear that Congress did not anticipate that situation.

IV. IMPOSITION OF STATE SEVERANCE TAXES COULD DECREASE THE VALUE OF MINERAL LEASES ON FEDERAL LANDS.

Under the terms of mineral leases issued by the Department of Interior, lessees are generally liable for any state taxes lawfully assessed on the minerals produced from the lease. Until the decisions of the Louisiana courts in this case, however, bidders on federal leases on acquired lands where states had not reserved taxing jurisdiction would not anticipate paying severance taxes, because severance taxes were not permitted under the Buck Act.

The Louisiana severance tax on oil is 12.5% of the value of oil severed from the land. La. R.S. 47:633(7). Payment of the severance tax is a substantial additional cost, which decreases the rate of return on the oil produced from federal lands. Although the amount of severance taxes paid to Louisiana is deductible from federal income taxes, the cost of the severance tax is not eliminated, but is reduced by the product of the federal corporate income tax rate times the amount of state taxes paid. Assuming an applicable marginal corporate income tax rate of 35%, the federal tax deduction would offset only a little more than one third of the expense of paying state severance taxes. Thus, for example, if leases were being negotiated on tracts within Barksdale Air Force Base today, the net additional cost of the severance tax would be roughly 8% of the value of the oil produced. That additional cost would have to be taken into account in the evaluation of the leases.[18]

If a severance tax may be imposed on oil and gas production on acquired federal lands, it could also be imposed

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[18] With respect to natural gas production, the Louisiana severance tax of $.07 per Mcf would have a similar effect.

on all other mineral production. On acquired federal lands in states that have not previously reserved the right to impose such taxes, the added cost of a severance tax could have an impact on how much private parties are willing to pay the federal government for mineral leases in the future. It could also affect the economic analysis used in determining when an oil or gas well, or other mineral deposit, has reached the end of its economic life and should be abandoned, resulting in abandonment of resources sooner than would otherwise be the case. Premature abandonment would result in a further loss of revenues to the United States, in addition to an avoidable loss of domestic energy resources.

CONCLUSION

API supports the granting of a writ of certiorari to correct the erroneous decisions of the Louisiana courts below.

Respectfully submitted,

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